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Paper No. 7

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OFFICE OF PETITIONS

Patent No. 6,778,813 :
Issue Date: August 17, 2004 :
Application No. 09/778,575 : LETTER
Filed: February 7, 2001 :
Title: AUDIO SYSTEM/CUP :
ASSEMBLY :

This is in response to the letter filed February 5, 2009, asserting that the maintenance fee in the above-identified patent was timely paid by Express Mail.

Any request for reconsideration should be entitled "Petition under 37 CFR 1.10 to accept payment of maintenance fee and surcharge as of deposit in US Postal Service" and should be sent to one of the addresses or facsimile numbers noted below.

The patent issued August 17, 2004. The window for paying the first maintenance fee without surcharge opened on August 17, 2007 and closed on February 17, 2008. The window for paying the first maintenance fee with surcharge opened on February 18, 2008, and closed on August 17, 2008.

On February 25, 2008, patentee was mailed a Maintenance Fee Reminder. As the patent correspondence address of record had not been changed, the reminder was sent to attorney John Lister. On September 15, 2008, patentee was mailed to his home address a Notice of Patent Expiration for failure to pay the maintenance fee of \$465 (and surcharge of \$65) by August 17, 2008. Office records indicate that the maintenance fee was not received until August 25, 2008.

By letter filed February 5, 2009, patentee maintains that the \$530 was sent by Express Mail on August 15, 2008. Patentee indicates that his sister deposited the maintenance fee payment in the United States Express Mail service on his behalf. In support thereof, patentee submits a copy of an email received by his sister presumably from her credit union, and a copy of a letter to patentee from the United States Postal Service. The email suggests that patentee's sister purchased postage stamps on August 15, 2008, but is not otherwise persuasive that she deposited the maintenance fee in Express Mail pursuant to 37 CFR 1.10. The letter from the United States Postal Service acknowledges that patentee has expressed to the Postal Service that he experienced difficulties with a delivery of Express Mail sent on August 15, 2008. The letter does not make clear whether the United States Postal Service is merely reiterating patentee's claims of delay. A corroborating letter from the United States Postal Service needs to verify that the Express Mail letter was in fact deposited with the United States Postal Service Post Office to Addressee service on August 15, 2008.

More importantly, patentee needs to establish that he deposited the maintenance fee payment on August 15, 2008 in compliance with the provisions of 37 CFR 1.10 in order for the patent to be reinstated. 37 CFR 1.366(b) provides that the certificate of mailing procedures of 37 CFR 1.8 or the mailing by "Express Mail" provisions of 37 CFR 1.10 may be utilized in paying maintenance fees. However, the specific requirements of either 37 CFR 1.8 or 1.10 must be fully complied with if the benefits of either are desired. In other words, patentee must establish that his maintenance fee payment and surcharge were deposited in the United States Postal Service Post Office to Addressee service on August 15, 2008, as alleged (or no later than August 17, 2008, the last day of the grace period) in compliance with 37 CFR 1.10.

37 CFR 1.10 provides:

(a)(1) Any correspondence received by the U.S. Patent and Trademark Office (USPTO) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed with the USPTO on the date of deposit with the USPS.

(2) The date of deposit with USPS is shown by the "date in" on the "Express Mail" label or other official USPS

notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the USPTO receipt date as the filing date. See § 1.6(a).

Furthermore,

(b) Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the "Express Mail" mailing label number thereon.

Thus, in order for patentee to make the necessary showing, patentee must provide the Office with, at minimum,

1. a copy of the maintenance fee and surcharge transmittal (or cover letter) used to send the payment, and
2. a copy of the Express Mail mailing label used to send the payments.
3. Moreover, as the maintenance fee and surcharge were refunded to patentee. Patentee must submit the \$530 with any allegation that these fees were timely paid.

If patentee cannot provide a persuasive showing that the maintenance fee and surcharge were timely paid pursuant to 37 CFR 1.10, patentee is not precluded from filing a petition under 37 CFR 1.378(c) to accept the unintentionally delayed payment of a maintenance fee. Such a petition requires a \$1,640 surcharge and payment of the maintenance fee, which is currently \$490. (The \$65 surcharge is not required on petition under 37 CFR 1.378(c)). Moreover, any petition under 37 CFR 1.378(c) must be filed within 24 months of the expiration of the patent. However, the filing of such a petition based on unintentional delay cannot be intentionally delayed. Thus, patentee should file any such petition as promptly as possible if (and after) determining that patentee cannot provide a persuasive showing

that the maintenance fee and surcharge were timely paid pursuant to 37 CFR 1.10.

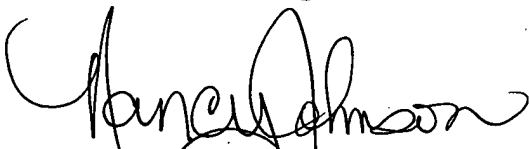
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By fax: (571) 273-8300
 ATTN: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name and title.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions